

# Proaction Confidentiality and Data Protection Agreement

(the "Confidentiality and Data Protection Agreement").

## 1. REFERENCES

### 1.1 References

This Confidentiality and Data Protection Agreement constitutes a specific agreement incorporated into the Proaction Services Agreement by the Proaction Service Offer made between the Customer and the Proaction's Subsidiary with which the Proaction Service Offer was entered into.

### 1.2 Definitions

Capitalized terms in this Confidentiality and Data Protection Agreement shall have the meaning set forth in Schedule A attached to the Corporate Terms of Use, except as set forth below:

**"Community Data Territories"** means the territory of Republic of Ireland;

**"Data Controller"**: means the employee or officer of the Customer having this designation under the provisions of the DPMR and who is responsible for the processing of the Personal Data for the Customer;

**"GDPR"** means the European Union Regulation No. 2016/679, known as the "General Data Protection Regulation", as amended from time to time;

**"Hosting Territory"** means, unless a different territory has been agreed upon between the Parties in the Proposal: the Provinces of Quebec and Ontario, Canada;

**"Privacy Jurisdiction"** means, unless a different jurisdiction has been agreed upon between the Parties in the Proposal:

- if the Customer is headquartered in the European Union: France;
- if the Customer is headquartered in the United States: the United States; and
- in all other cases: the Applicable Jurisdiction;

**"Proaction Data"**: means the data, results, reports, algorithms and calculations that do not include Personal Data created or generated from Customer Data through the UTrakk\_DMeS Application.

## 2. DATA OWNERSHIP

2.1 Proaction does not claim ownership of Customer Data, which is presumed to be owned by the Customer.

2.2 Proaction Data remains the property of Proaction at all times, and the rights of Authorized Users and the Customer with respect to the Proaction Data are limited to the license granted by Proaction under the Proaction Services Agreement.

### 3. CONFIDENTIALITY

3.1 Subject to the provisions of Section 3.8, each Party hereby undertakes, on its own behalf and on behalf of its affiliates, shareholders, directors, officers, employees, representatives and agents (hereinafter referred to as its "Representatives"), as long as the Proaction Services Agreement is in force and for a period of five (5) years following the date on which it is terminated or expires, :

- a) not to disclose, publish, reveal or otherwise transmit in any manner whatsoever any Confidential Information of the other Party to anyone other than its legal and financial advisors, unless compelled to do so by an order of a court of competent jurisdiction;
- b) not to use any Confidential Information of the other Party for any purpose whatsoever other than the purposes set out in the Proaction Services Agreement;
- c) not to copy or otherwise reproduce any Confidential Information of the other Party, on any medium whatsoever, for any purpose whatsoever, other than the purposes set out in the Proaction Service Agreement; and
- d) to deliver upon request all documents and other tangible property in its possession belonging to the other Party and containing Confidential Information.

#### 3.2 Protective measures

Each Party hereby undertakes to follow the same standard of care and diligence that it imposes on itself with respect to its own confidential strategic information with respect to the other Party's Confidential Information, and in any event, standard of care and diligence that will in no way be inferior to those that a normally prudent and diligent business would use to protect its own confidential or strategic information.

Proaction declares that its employees, authorized subcontractors, agents and other Proaction Group entities are informed of the confidential nature of the Customer Data and that it takes appropriate organizational measures to ensure that all maintain the confidentiality of the Customer Data.

#### 3.3 No obligation

This Confidentiality and Data Protection Agreement does not imply any obligation on the part of either Party to disclose any Confidential Information to the other Party.

#### 3.4 Property

Each Party acknowledges and agrees that any document transmitted or disclosed to it and containing Confidential Information is, and will remain, at all relevant times, the exclusive property of the Party from which it originates, or of its suppliers, customers, shareholders, directors, officers, employees and/or agents, as applicable. Nothing in these provisions shall be construed as conferring upon a Party any title, ownership, license or other right or interest in the Confidential Information of the other Party, except for the specific and limited right to refer to and use any such Confidential Information for the purposes of the Proaction Services Agreement.

#### 3.5 Forced disclosure

If a Party is required to disclose any Confidential Information pursuant to an enforceable court order from a court of competent jurisdiction, such disclosure shall not constitute a breach of the covenants made by such Party if, to the extent permitted by the Laws of the Applicable Jurisdiction or the laws applicable in the Privacy Jurisdiction, that Party gives timely notice to the other Party and assists with efforts to obtain an appropriate order, or any other

effective measure, to ensure the confidentiality of the Confidential Information to be disclosed before complying with any such order.

### 3.6 Permitted Use of Customer Data

Notwithstanding any provision of the Proaction Services Agreement to the contrary, Proaction may freely disclose and/or use any Customer Data in its possession if it is compelled to do so by a third party in accordance with the Laws of the Applicable Jurisdiction, or the applicable laws of the Privacy Jurisdiction, as the case may be, or if such Customer Data is in the public domain. Proaction may also use Customer Data for the development of modifications and improvements made from time to time to the Utrakk\_DMeS Application in the normal course of business or for any other purpose if such data is anonymized.

### 3.7 Customer Data deemed non-confidential

The following information shall be deemed not to constitute Confidential Information :

- a) In the case of Confidential Information of Proaction Group entities, information that was known to the Customer, any of its affiliates, or any of their respective employees, subcontractors and/or agents, prior to the entering into force of this Confidentiality and Data Protection Agreement, where the person having disclosed such Confidential Information was not subject to another confidentiality agreement with a Proaction Group entity;
- b) In the case of the Customer's Confidential Information, was known to one of Proaction Group entity, or any of their respective employees, authorized subcontractors and/or agents, prior to the entering into force of this Confidentiality and Data Protection Agreement, where the person who disclosed the Confidential Information was not subject to a confidentiality agreement with the Customer other than this Confidentiality and Data Protection Agreement;
- c) Information that is disclosed to a Party by a third party without breach of a confidentiality undertaking to the other Party;
- d) Information that is disclosed by an Authorized User on the virtual community; or
- e) Information that becomes available to the public through no fault of the other Party.

Notwithstanding the foregoing, Personal Data is always deemed confidential under this section and is subject to the provisions of this Confidentiality and Data Protection Agreement concerning the Personal Data with respect to any disclosure.

- 3.8 The confidentiality obligations contained in this Confidentiality and Data Protection Agreement remain in effect indefinitely with respect to Personal Data.

## 4. DATA SECURITY

### 4.1 Storage

Customer Data is stored electronically by our Approved Hosting Providers at facilities located in the Hosting Territories. Customer Data associated with the virtual community is stored electronically by our community management service provider on servers located in the Community Data Territories.

#### 4.2 Security measures

Proaction undertakes to implement appropriate technical and organizational measures to ensure that Customer Data is protected against accidental or unauthorized destruction or accidental loss, modification, unauthorized access and any other unauthorized processing, including the measures indicated in the Technical and Organizational Measures.

The Customer acknowledges that the Customer Data is hosted by our Approved Hosting Providers and that the security measures surrounding the hosting of the data and access to the physical and logical infrastructures of these Approved Hosting Providers are provided exclusively by them. The Customer acknowledges that the technical and organizational measures taken by our Approved Hosting Providers for this purpose are appropriate to protect the Customer Data as of the date of this Confidentiality and Data Protection Agreement.

Proaction uses only Approved Hosting Service Providers that offer reasonable measures to protect the security and integrity of data. The policies and commitments relating to data security and integrity adopted to by our Approved Hosting Service Providers are available through the tab relating to Authorized Subcontractors available on the UTrakk\_DMeS Website.

#### 4.3 Security breach

In the event of an unauthorized access, use, disclosure or modification of Customer Data (a "**Security Breach**"), Proaction will use commercially reasonable efforts, as soon as reasonably possible, to:

- a) promptly inform the Customer of the Security Breach;
- b) terminate any unauthorized access to Customer Data;
- c) identify, with its Authorized Subcontractors, the cause of the Security Breach;
- d) take all reasonable corrective action to prevent another Security Breach;
- e) reasonably cooperate with its Authorized Subcontractors and the Customer to determine the nature of the Customer Data that has been the subject of a Security Breach and provide the Customer with a description of such data and the corrective measures taken by Proaction to prevent future Security Breaches; and
- f) to the extent that a Security Breach involves Personal Data, notify the responsible authorities if such notification is required by the applicable laws of the Privacy Jurisdiction.

#### 4.4 Return and destruction of data

At the Customer's express request, or no later than 30 days following the expiration or termination (if earlier) of the Proaction Services Agreement, Proaction shall permanently delete or anonymize Customer Data processed under the Proaction Services Agreement in accordance with the applicable laws of the Privacy Jurisdiction, the Laws of the Applicable Jurisdiction and Customer's instructions. If the Customer wishes to receive a copy of the Customer Data after the Proaction Services Agreement expires or is terminated, such copy must be requested within the 30-day period mentioned above, failing which the Customer Data will be permanently destroyed or anonymized.

At any time, Proaction will, at the Customer's request, delete or anonymize all or part of the Customer Data. Proaction will confirm in writing to the Customer the deletion or anonymization of Customer Data, including Personal Data, if the Customer so requests. The Customer acknowledges that Proaction shall not be in breach under the terms of the Proaction Services Agreement if such breach results in whole or in part from an instruction by the Customer to delete or anonymize Customer Data. Notwithstanding the foregoing, it is understood that Proaction Group

entities and their Authorized Subcontractors may retain and store Personal Data to the extent required by the applicable laws of the Privacy Jurisdiction.

The Customer acknowledges that when Customer Data is removed from the UTrakk\_DMeS Application by an Authorized User through the user interface, such Customer Data is made inaccessible on the UTrakk\_DMeS Application and is no longer processed by Proaction other than for the purpose of ensuring its preservation, but it remains stored on servers controlled by Proaction. The deletion or definitive anonymization of Customer Data must therefore be expressly requested by the Customer.

Proaction Data is not subject to this Section 4.4.

## 5. PROCESSING OF PERSONAL DATA

### 5.1 Compliance with Applicable Laws and the GDPR

Proaction shall carry out any processing of Personal Data in compliance with the applicable laws of the Privacy Jurisdiction, as well as in compliance with the GDPR with respect to the processing of Personal Data subject to the GDPR.

### 5.2 Customer's decision-making power

The Customer acknowledges that it is responsible for determining the purposes of processing Personal Data hosted on the Utrakk\_DMeS Application. The Customer is responsible for determining the legal basis of the processing of Personal Data carried out through the Utrakk\_DMeS Application and for obtaining the consent of the concerned individuals before processing their Personal Data, where applicable. The Customer warrants to Proaction, as well as to all the entities of the Proaction Group, that it is authorized, and will at all times be authorized, to carry out any processing of Personal Data that is requested or carried out by one of its Authorized Users through the Utrakk\_DMeS Application.

### 5.3 Customer Processing Instructions

Except as provided in the Proaction Services Agreement, Personal Data shall be processed by Proaction exclusively on behalf of the Customer and in accordance with the Customer's instructions. Proaction undertakes not to process or disclose Personal Data to any individual or legal entity, except in accordance with the provisions of the Proaction Services Agreement, in accordance with the Privacy Policy or in accordance with the Customer's instructions.

The Customer acknowledges that the processing of Personal Data carried out by Proaction under the Proaction Services Agreement is determined in part by the actions taken by Authorized Users via the interface of the Utrakk\_DMeS Application. All such actions shall be considered as valid processing instructions from the Customer.

Proaction undertakes to inform the Customer if a Proaction representative is informed of an instruction from the Customer and believes that compliance with this instruction would be contrary to the applicable laws of the Privacy Jurisdiction. In such a case, Proaction shall be entitled to suspend the execution of the instruction until it is confirmed or modified by an Authorized Representative of the Customer. Proaction does not systematically monitor the Customer's instructions, which remains responsible for their compliance.

6. AUTHORIZED SUBCONTRACTORS

- 6.1 Proaction is authorized by the Customer to retain the services of subcontractors to carry out the processing of Customer Data, including Personal Data.
- 6.2 Proaction represents and warrants that its Authorized Subcontractors provide sufficient guarantees that the rights of the individual whose Personal Data is processed under the Proaction Services Contract are protected.
- 6.3 Authorized Subcontractors retained by Proaction to process Customer Data may include Proaction Group entities and other persons or entities designated as Authorized Subcontractors on the list of Authorized Subcontractors through the Authorized Subcontractors tab available on the UTrakk\_DMeS Website. Proaction will notify the Customer of any changes to its Authorized Subcontractors by referring the Customer to the updated list of Authorized Subcontractors in the event of any significant change.
- 6.4 Proaction shall remain responsible for the performance of its obligations with respect to the protection of Personal Data under this Confidentiality and Data Protection Agreement, regardless of the involvement of Authorized Subcontractors.

7. TRANSFER OF PERSONAL DATA

- 7.1 The processing of Personal Data subject to the GDPR by Proaction Group entities shall take place exclusively :
  - a) within the European Economic Area;
  - b) in a jurisdiction that provides an adequate level of protection under a decision of the European Commission based on Directive 95/46/EC or Article 45 (1) of the GDGR;
  - c) in any jurisdiction, by an organization or entity offering appropriate safeguards, including through the Privacy Shield or through standard data protection clauses adopted by a data protection supervisory authority and approved by the European Commission; or
  - d) in any jurisdiction, with the written consent of the Customer.
- 7.2 The processing of Personal Data that is not subject to the GDPR by Proaction Group entities will take place in any jurisdiction where such processing is permitted by the applicable laws of the Privacy Jurisdiction.
- 7.3 Any transfer of Personal Data will be made pursuant to a written contract between a Proaction Group entity and an Authorized Subcontractor that includes appropriate undertakings to ensure an adequate level of protection for transferred Personal Data, taking into account the nature of transferred Personal Data .

8. ASSISTANCE

- 8.1 Proaction undertakes to :
  - a) Reasonably assist the Customer in fulfilling its obligation to comply with the requests of data subjects whose Personal Data is processed by Proaction in order to exercise their rights under the GDPR or other applicable privacy laws, by implementing appropriate measures considering the nature of the processing;
  - b) Take commercially reasonable measures to assist the Customer in ensuring compliance with its obligations under Articles 32 to 36 of the GDPR, where applicable, taking into account the nature of the processing and the information available to Proaction; and

c) To the extent that such notice is permitted by the applicable laws of the Privacy Jurisdiction, promptly notify the Customer of any audit or investigation of Proaction by a government authority concerning the processing of Personal Data by the Proaction Group.

8.2 Where Proaction provides assistance to the Customer at the Customer's request under this Article **Erreur ! Source du renvoi introuvable.** (and not by virtue of its own direct obligations under applicable data protection laws), Proaction may invoice the Customer for the costs reasonably incurred in providing such assistance. Proaction shall submit an estimate of such costs to the Customer prior to providing the assistance whenever possible. Proaction shall not be in breach of its obligation to provide assistance to the Customer if the Customer does not agree to pay the costs incurred.

## 9. AUDIT RELATING TO PERSONAL DATA

9.1 Upon reasonable notice to Proaction, the Customer is authorized, at its own expense, to carry out the necessary controls to ensure that the Personal Data processed by Proaction on the Customer's behalf is processed in accordance with the Customer's instructions. At the Customer's request, Proaction shall provide access to the premises where the Personal Data is processed and allow for the audit and inspection of the processing carried out by Proaction. Such an audit may be conducted by the Customer and/or a third party (selected by the Customer and reasonably accepted by Proaction) acting on the Customer's behalf. The Customer shall take all necessary measures to avoid causing any damage or disruption to the premises, equipment, personnel and business of Proaction Group entities.

9.2 The Customer and Proaction shall agree in advance on the nature, scope and duration of any audit by the Customer, and the Customer shall reimburse Proaction for all reasonable costs associated with such an audit, which may be estimated at the Customer's request prior to the start of the audit.

## 10. JURISDICTION

All provisions of the Proaction Services Agreement regarding the processing of Personal Data are governed by the laws applicable in the Privacy Jurisdiction. All provisions of this Confidentiality and Data Protection Agreement that do not concern the processing of Personal Data are governed by the Laws of the Applicable Jurisdiction.

## 11. GENERAL

In the event of any inconsistency between any of the provisions of this Confidentiality and Data Protection Agreement and any other provision of the Proaction Service Agreement, the provisions of the Confidentiality and Data Protection Agreement shall always take precedence, unless and to the extent that it is expressly stipulated that another provision of the Proaction Services Agreement shall take precedence or that a provision of this Confidentiality and Data Protection Agreement shall be set aside or modified.